STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED May 21, 2013
v	No. 309022 Wayne Circuit Court
DANIEL AWRAHA, Defendant-Appellant.	LC No. 10-013193-FC

Before: CAVANAGH, P.J., and SAAD and RIORDAN, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction of assault with intent to do great bodily harm less than murder, MCL 750.84. Defendant was sentenced as a habitual offender, fourth offense, MCL 769.12, to 4 to 10 years. We affirm.

I. FACTUAL BACKGROUND

Defendant was standing at the front counter of a gas station when the victim entered the store. The victim had consumed approximately four beers and at the same counter, asked for a pack of cigarettes. Defendant, however, told the victim "I'm first." The victim responded "go ahead," to which defendant replied, "I'll cut you up." They exchanged more words, and the victim adopted a boxing stance, although he later testified it was in a "comical way."

The victim soon backed away from defendant, observing that defendant had a knife. Defendant then grabbed something out of the cooler and the victim asked if he was still planning on cutting him. Because defendant again had the knife in his hand, the victim grabbed a potato chip rack and swung it, unsuccessfully attempting to knock the knife out of defendant's hand. Defendant then charged the victim, who dropped the rack and fled out of the gas station.

The victim continued to run down the street away from his waiting cab, and defendant followed in close pursuit. Unfortunately for the victim, he stumbled, and defendant caught and attacked him. Defendant stabbed the victim four times, puncturing the victim's diaphragm, lacerating his liver, and severing a nerve in his back, which caused paralysis in his right side. After defendant was arrested and was being processed, he told a police officer: "I stabbed him. He ran like a b----." Defendant was convicted of assault with intent to do great bodily harm less than murder, MCL 750.84, and sentenced as a fourth-habitual offender to 4 to 10 years. Defendant now appeals.

II. SUFFICIENCY OF THE EVIDENCE

A. Standard of Review

Defendant argues that the prosecution failed to produce sufficient evidence to disprove his theory of self-defense. "Due process requires that a prosecutor introduce evidence sufficient to justify a trier of fact to conclude that the defendant is guilty beyond a reasonable doubt." *People v Tombs*, 260 Mich App 201, 206-207; 679 NW2d 77 (2003). This Court reviews "de novo a challenge on appeal to the sufficiency of the evidence." *People v Ericksen*, 288 Mich App 192, 195; 793 NW2d 120 (2010). "In determining whether the prosecutor has presented sufficient evidence to sustain a conviction, an appellate court is required to take the evidence in the light most favorable to the prosecutor" to ascertain "whether a rational trier of fact could find the defendant guilty beyond a reasonable doubt." *People v Tennyson*, 487 Mich 730, 735; 790 NW2d 354 (2010) (quotation marks and citations omitted). "All conflicts in the evidence must be resolved in favor of the prosecution and we will not interfere with the jury's determinations regarding the weight of the evidence and the credibility of the witnesses." *People v Unger*, 278 Mich App 210, 222; 749 NW2d 272 (2008).

B. Analysis

"Once evidence of self-defense is introduced, the prosecutor bears the burden of disproving it beyond a reasonable doubt." *People v Roper*, 286 Mich App 77, 86; 777 NW2d 483 (2009) (quotation marks and citation omitted). An individual may use force to defend himself if he honestly and reasonably believes that such force is necessary to defend himself from an imminent, unlawful use of force by another. *People v Dupree*, 486 Mich 693, 707; 788 NW2d 399 (2010). "In general, a defendant does not act in justifiable self-defense when he used excessive force or where he was the initial aggressor." *People v Guajardo*, __Mich App__; __NW2d__ (Docket No. 306213, issued March 19, 2013) (slip op at 5).

The prosecution produced sufficient evidence to prove that defendant could not have reasonably believed that the victim posed a threat of imminent harm. A surveillance video and the victim's testimony demonstrated that defendant and the victim were involved in a verbal confrontation. Defendant, however, escalated the confrontation when he produced a knife. The victim backed away from defendant and picked up a display rack, trying to strike the knife from defendant's hand. Defendant then charged the victim with the knife in hand. The victim immediately dropped the display rack and ran out of the gas station. Defendant pursued the victim until he fell, and defendant then stabbed the victim four times.

Viewing this evidence in a light most favorable to the prosecution, a rational fact-finder could have found beyond a reasonable doubt that defendant was the initial aggressor. Based on the victim's testimony, defendant was the first person to issue a threat, telling the victim that he was going to cut him. While the victim adopted a boxing stance, he testified that he did it in a comical way. Defendant also was the first to display a weapon, as the victim clearly testified that he only used the display rack in an effort to remove the knife from defendant's hand and defend himself.

Further, even if the victim was the initial aggressor, defendant's use of force was excessive under these circumstances. After the victim hit defendant with the rack, the victim dropped the rack and fled. Defendant pursued the victim and when the victim stumbled, defendant viciously stabbed him four times. A rational trier of fact could have concluded that when defendant stabbed the victim, he knew that the victim was unarmed, was defenseless on the ground, and was trying to withdraw from the confrontation. As this Court has recognized, "reasonableness depends on what an ordinarily prudent and intelligent person would do on the basis of the perceptions of the actor." *People v Orlewicz*, 293 Mich App 96, 102; 809 NW2d 194 (2011), remanded on different grounds 493 Mich 916 (2012). At the time defendant stabbed the victim, he could not reasonably have believed that the victim was an imminent threat.

"Moreover, the fact that defendant pursued [the victim] outside belies his claim that he feared for his life." *Roper*, 286 Mich App at 88. Defendant's argument that he believed the victim was going to return and attack again, possibly with a weapon, is unavailing. There is nothing in the record to support such a belief as reasonable. The victim never threatened to return, dropped the display rack, never suggested that he had any weapons, and, by all appearances, was trying to flee when defendant attacked. Also, a rational fact-finder could have found that defendant's statement to the police officer that he stabbed the victim who "ran like a b----" suggests that rather than fearing the victim would return, defendant was contemptuously pursuing the victim in an effort to harm him. Therefore, we find that the prosecution produced sufficient evidence to disprove defendant's theory of self-defense.

III. CONCLUSION

The prosecution produced sufficient evidence to support defendant's conviction of assault with intent to do great bodily harm less than murder. We affirm.

/s/ Mark J. Cavanagh
/s/ Henry William Saad
/s/ Michael J. Riordan